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Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS

IOTA PARTNERS, LTD.,

Plaintiff,

v.

SMITHBRIDGE GUAM, INC.,

Defendant.

CIVIL ACTION NO. CV-07-0015

ANSWER AND COUNTERCLAIM

In answer to Plaintiff's complaint herein, Defendant admits and denies the  
numbered allegations as follows.

1. Admits.
2. Admits.
3. Admits.
4. Admits.

PARTIES

5. Defendant is without knowledge sufficient to form an answer to this allegation, and therefore denies the same.

6. Admits.

FACTS

7. Admits.

8. Defendant is without knowledge sufficient to form an answer to this allegation, and therefore denies the same.

9. Defendant is without knowledge sufficient to form an answer to this allegation, and therefore denies the same.

10. Admits.

11. Denies.

12. Admits.

13. Denies.

14. Admits.

15. Admits.

16. Denies, and affirmatively alleges that it was Plaintiff who requested wooden planks reinforced with concrete and that Smithbridge explained to Plaintiff that the wood could crumble and float away, and requested for Iota to clear marine life and the ecosystem were the planks would be placed prior to laying the planks.

17. Admits.

18. Admits, but affirmatively alleges that Iota supplied the survey information Smithbridge used for calculating the amount of planks required, and that such information was false.

19. Admits, but affirmatively alleges that Defendant used the information supplied by Iota for determining the number of planks required.

1           20. Denies, and affirmatively alleges that the procedure was  
2 discussed and selected by both parties, and that the job would be constrained due  
3 to the fact that Smithbridge had only one long-reach excavator, a limitation  
4 acknowledged by Plaintiff.

5           21. Admits.

6           22. Admits.

7           23. Admits.

8           24. Admits.

9           25. Defendant is without knowledge sufficient to form an answer  
10 to this allegation, and therefore denies the same.

11          26. Admits.

12          27. Denies, and affirmatively alleges that Smithbridge began its  
13 work on August 21, 2006, working under the direction of Iota who was in charge  
14 of the operation.

15          28. Denies, and affirmatively alleges that Iota was in charge of the  
16 operations, was present and never objected to Smithbridge's performance, and  
17 that Smithbridge, who was renting equipment and operator to Plaintiff, performed  
18 as directed.

19          29. Admits, but affirmatively alleges that the breakage of the planks  
20 was due to the spacing of the planks being greater than planned because the  
21 information supplied by Iota was incorrect.

22          30. Admits.

23          31. Defendant is without knowledge sufficient to form an answer  
24 to this allegation, and therefore denies the same.

25          32. Defendant is without knowledge sufficient to form an answer  
26 to this allegation, and therefore denies the same.

27          33. Admits.

1 34. Denies.

2 35. Denies.

3 36. Denies.

4 37. Admits.

5 38. Admits, but affirmatively alleges that Plaintiff failed to pay  
6 Defendant all amounts due, as alleged in the counterclaim herein.

7 39. Defendant is without knowledge sufficient to form an answer  
8 to this allegation, and therefore denies the same.

9 40. Denies.

10 41. Denies.

11 FIRST CAUSE OF ACTION  
12 BREACH OF CONTRACT

13 42. Smithbridge incorporates paragraphs 1 through 41 of its  
14 answer herein.

15 43. Admits.

16 44. Defendant is without knowledge sufficient to form an answer  
17 to this allegation, and therefore denies the same.

18 45. Denies.

19 46. Denies.

20 47. Denies.

21 48. Denies.

22 49. Denies.

23 SECOND CAUSE OF ACTION  
24 NEGLIGENT MISREPRESENTATION

25 50. Smithbridge incorporates paragraphs 1 through 49 of its  
26 answer herein.

27 51. Denies.

28

52. Denies.

53. Denies.

54. Denies.

THIRD CAUSE OF ACTION  
BREACH OF WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

55. Smithbridge incorporates paragraphs 1 through 54 of its answer herein.

56. Denies.

57. Denies, and affirmatively alleges that Iota knew that Smithbridge had only one long-reach excavator, and further alleges that the planks would have been suitable if enough of them had been manufactured and paid for.

58. Denies.

59. Denies.

60. Denies.

61. Denies.

62. Denies.

63. Denies.

FOURTH CAUSE OF ACTION  
DAMAGE TO BUSINESS REPUTATION

64. Smithbridge incorporates paragraphs 1 through 63 of its answer herein.

65. Denies.

66. Denies.

67. Denies.

68. Denies.

AFFIRMATIVE DEFENSES

By way of further answer, Defendant raises the additional affirmative defenses as follows:

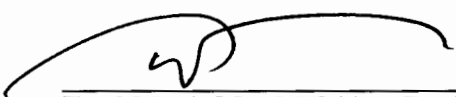
1. Waiver.
2. Estoppel.
3. Iota repeatedly represented to Smithbridge prior to the start of work that the depth of the water to the reef averaged only 2.5 feet, but the true working condition was that this lagoon was only shallow enough for the excavator to operate approximately only two hours a day, and this was a chief reason for Plaintiff's lack of productivity on the project.

COUNTERCLAIM

By way of counterclaim against Plaintiff herein, Defendant alleges that Plaintiff still owes Smithbridge the sum of \$38,964.09 for labor and equipment furnished by Smithbridge to Plaintiff on the project which is the subject of this lawsuit. A breakdown of this claimed amount is attached hereto as Exhibit 1, and incorporated herein by this reference as if specifically pled.

WHEREFORE, Defendant prays that Plaintiff's complaint herein be dismissed with prejudice, Plaintiff taking nothing thereby, and for judgment in Defendant's favor in the amount of \$38,964.09, plus interest and costs of suit.

Dated this 4th day of September, 2008.

  
THOMAS McKEE TARPLEY,  
Attorney for Defendant  
SMITHBRIDGE GUAM, INC.

# EXHIBIT 1







**Rota Dredge**  
**IOTA Billings**

Description	Amount	Discount (30%)	Net Amount	Total Due	Payments	Balance
<i>Week ended 9/10 (ACTUAL)</i>						
50 ton excavator (down)	-	-	-			
250CFM compressor (down)	-	-	-			
Water truck (down)	-	-	-			
Operators (2 at \$500/day for 7 days)	(7,000.00)	2,100.00	(4,900.00)			
Foreman (1 at \$650/day for 7 days)	(4,550.00)	1,365.00	(3,185.00)	(8,085.00)		(13,571.59)
<i>Note: Excavator down till Firday evening.</i>						
<i>Week ended 9/17 (ACTUAL)</i>						
50 ton excavator (Th&F)	(4,571.43)	1,371.43	(3,200.00)			
50 ton excavator (stand-by M~W)	(3,428.57)	1,028.57	(2,400.00)			
250CFM compressor (Th&F)	(471.43)	141.43	(330.00)			
250CFM compressor (stand-by M~W)	(353.57)	106.07	(247.50)			
Water truck (Th&F)	(428.57)	128.57	(300.00)			
Water truck (stand-by M~W)	(321.43)	96.43	(225.00)			
Operators (2 at \$500/day for 7 days)	(7,000.00)	2,100.00	(4,900.00)			
Foreman (1 at \$650/day for 7 days)	(4,550.00)	1,365.00	(3,185.00)	(14,787.50)		(28,359.09)
<i>Week ended 9/24 (ESTIMATED)</i>						
Operators (2 at \$500/day for M)	(1,000.00)	300.00	(700.00)			
Foreman (1 at \$650/day for M)	(650.00)	195.00	(455.00)			
Operators (1 at \$500/day for Tu&W)	(1,000.00)	300.00	(700.00)			
Demobilization	(12,500.00)	3,750.00	(8,750.00)	(10,605.00)		(38,964.09)